IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 23611 of 2004

Between:

M/s. Vikas Residential College, Ring Road, Guntur, Guntur District,
Represented by its Managing Partner, K. Vivekananda,S/o. Chenchurama Naidu,
Aged 59 years

..... PETITIONER

AND

1 The Assistant Commissioner of Commercial Taxes (INT)

(LTU), Guntur, Guntur District.
2 The Appellate Deputy Commissioner of Commercial Taxes,

Guntur, Guntur District.
3 The Additional Commissioner of Commercial Taxes(Legal),

O/o. The Commissioner of Commercial Taxes, Excise –

Commercial Taxes Building, Opp : Gandhi Bhavan,

M.J. Road, Nampally, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly in the nature of Writ of CERTIORARI declaring that calling for the records relating to the impugned proceedings in CCT's Ref.No. LV(III)/3349, 3350/2004, dt. 27-11-2004 passed by the Additional Commissioner (CT) (Legal)(FAC) Hyderabad rejecting the stay application filed by the petitioner for stay of collection of disputed tax of Rs.1,87,630/- Rs. 1,47,510/- Rs. 1,34,186/- and Rs.24,322/- working to a total of Rs.4,93,658/- for the assessment years 2001-2002, 2002-2003, 2003-2004 and 2004-2005(Provl.) (Upto July, 2004) respectively pending disposal of the appeals on the file of STAT, Hyderabad as illegal, improper, arbitrary on the ground that exemption from sales tax on transactions of supply/sale of food and drinks by the petitioner's educational institute to the students residing in the hostels in G.O.Ms.No. 1036, dt. 20-10-1989 issued under Section-9(1) of the APGST Act, 1957 is general in nature capable of covering the purchase transactions of raw food materials like Paddy and Milk in terms of the Judicial decisions in 24 APSTJ 1(A.P), 90 STC 537 (Karnataka) as affirmed by the Honourable Supreme Court in C.A.No's. 1784-89 of 1994 dated 28-7-1998 and also by holding that the expression "food" as used in G.O.Ms.No. 1036 Rev.(CT-II) Department dt. 20-10-1989 being comprehensive, including any or all within it raw food materials also such as paddy and as such sale/supply of food being exempt from tax is capable of covering purchase of raw food materials also in terms of the judgements of Allahabad High Court in 32 STC 14, also of the Honourable Supreme Court reported in AIR 1983 SC 1015 AND AIR 1981 SC 1485 or in the alternate by holding that the petitioner educational instituties activity of imparting education to the students in the residential college and coaching centers beyond the purview of the expressions business and dealer as envisaged in Sections-2(bbb) and Section - 2(d) of the APGST Act, to set aside the garnishee notice, dt. 20-11-2004 and consequently direct the assessing authority namely the first respondent i.e., Assistant Commissioner of Commercial Taxes (INT) (LTU), Guntur Division, Guntur not to take any coercive steps for recovery of the above mentioned disputed taxes pending disposal of the appeals on the file of STAT, Hyderabad and grant such other

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent No.: GP FOR COMMERCIAL TAX

The Court made the following :

O R D E R (Per MHSA,J)

Having heard the learned counsel for the respective parties, we are inclined to dispose of the instant writ petition with certain appropriate directions.

2 . Petitioner has questioned the common order dated 27.11.2004 passed by the learned Additional Commissioner, 3rd respondent herein, whereby the application filed for stay of collection of disputed tax, pending disposal of the appeal before the Sales Tax Appellate Tribunal, was rejected.

3 The tax involved is for the assessment years 2001-02 to 2004-05 in the case of the petitioner herein and likewise in the case of another assessee, in respect whereof a seperate writ petition has been filed.

4. In such view of the matter, instant writ petition is being disposed of with a direction that if the petitioner deposits fifty per cent of the disputed tax, giving credit to the amount already paid in respect of each assessment year in question, the respective appeals for the said assessment years, shall be disposed of on their own merits by the learned Sales Tax Appellate Tribunal without insisting for payment of the balance of the disputed tax for the said assessment years relating to the appeal.

5. As it is represented before us that pursuant to the garnishee notice under Section 17 of the A.P.G.S.T. Act, 1957 issued by the 1st respondent to the Bank Manager, Vysya Bank Limited, the bank has paid Rs.1,41,228/- to the Assistant Commissioner (CT). This being 37.5 per cent of the disputed tax and as already 12.5 per cent having been deposited as pre-deposit for maintaining the appeal, it is directed that the attachment of the bank account shall sand vacated.

6. Writ petition stands disposed of in terms as above. No costs.

7 . Be it clarified that we have not gone into the merits of the main controversy and all questions in relation thereto are kept open for being raised before and considered by the learned Sales Tax Appellate Tribunal in the respective appeals pending before it.

M.H.S.ANSARI,J

T.CH.SURYA RAO

NOTE:

Issue C.C. urgently on priority basis.

B/O

To

1 The Assistant Commissioner of Commercial Taxes (INT)

(LTU), Guntur, Guntur District.
2 The Appellate Deputy Commissioner of Commercial Taxes,

Guntur, Guntur District.
3 The Additional Commissioner of Commercial Taxes(Legal),

O/o. The Commissioner of Commercial Taxes, Excise –

Commercial Taxes Building, Opp : Gandhi Bhavan,

M.J. Road, Nampally, Hyderabad.

4. To C.Cs. to G.P. for Commercial Taxes, High Court of A.P.

Buildings, Hyderabad(out).

5. To C.D. copies.